Sprint

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November 23, 1998

Janice Myles
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Federal Communications Commission
1919 M Street, N.W. Room 554
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Re: Comments of Sprint Corporation in CC Docket No. 96-61

Dear Ms. Myles:

Enclosed herewith is a 3.5 inch diskette containing the Comments of Sprint Corporation in the above-referenced proceeding. If you have any questions, please call me at 828-7438.

Respectfully submitted,

Michael B. Fingerhut
General Attorney

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning	)	
the Interstate, Interexchange	)	CC Docket No. 96-61
Marketplace	)	
	)	
Implementation of Section 254(g)	)	
of the Communications Act of 1934,	)	
as amended	)	
	)	
1998 Biennial Regulatory Review --	)	
Review of Customer Premises	)	
Equipment and Enhanced Services	)	CC Docket No. 98-183
Unbundling Rules in the	)	
Interexchange, Exchange Access	)	
and Local Exchange Markets	)	
	)	

COMMENTS OF SPRINT CORPORATION

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COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") hereby respectfully submits its comments on the Commission's *Further Notice of Proposed Rulemaking* (FCC 98-258) released October 9, 1998 ("*Further Notice*") in the above-captioned proceedings. As set forth below, Sprint believes that there is no justification -- economic or otherwise -- to continue to deny non-dominant carriers the ability to offer their customers and potential customers bundled packages comprised of telecommunications services, customer premises equipment ("CPE") and information services. Sprint also believes that the Commission should relieve those dominant carriers that have certain characteristics and meet certain conditions of the bundling ban.

I. THE COMMISSION SHOULD ELIMINATE ITS RULES THAT PREVENT NON-DOMINANT CARRIERS FROM BUNDLING CPE AND ENHANCED SERVICES WITH THEIR TELECOMMUNICATIONS SERVICES.

There can be no question that the Commission's rules adopted in the *Computer II Inquiry*, 77 FCC 2d 384 (1980), proscribing the bundling of CPE and enhanced services with telecommunications services have accomplished their intended purpose. Such rules were implemented to prevent dominant carriers from using bundling as an anticompetitive marketing tool to retard the continued development of competitive markets in the provision of CPE and enhanced services. The Commission explained that "[i]n regulated markets characterized by dominant firms, there may be an incentive ... to use bundling as an anticompetitive marketing strategy, *e.g.*, to cross-subsidize competitive by monopoly services, that restricts both consumer freedom of choice as well as the evolution of a competitive marketplace." *Computer Inquiry*, 77 F.C.C. 2d at 443 n. 52. Thus, by "[r]esticting bundling practices in such markets," the Commission sought to "reduce[] these impediments to improved consumer welfare." *Id.*

In the nearly two decades since the no-bundling rules were adopted, competition in both the CPE and enhanced services markets has become more intense. *See e.g., Further Notice* at ¶12 and n. 33 (finding that the CPE market has been very competitive for a number of years); *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services*, 8 FCC Rcd 3891 (¶5) (1993) (same); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services (Further Notice of Proposed Rulemaking)*, 13 FCC Rcd 6040, 6063 (¶36) (1998) ("...the level of competition within the information services market, which the Commission termed 'truly competitive' as early as 1980, has continued to increase markedly as new competitive [information service providers] have entered the market."); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the*

Communications Act of 1934, as amended, 11 FCC Rcd 21905, 21935-36 (¶62) (1996) ("The market for information services is fully competitive."); *Third Computer Inquiry,* 104 F.C.C. 2d 958, 1010 (¶95)(1986) (same). Similarly, since the no-bundling rules were adopted and especially since the AT&T divestiture in 1984, the interexchange market has become increasingly more competitive. *Application of WorldCom Inc. and MCI Communications Corporation for Transfer of Control Of MCI Communications Corporation to WorldCom, Inc. (CC Docket No. 97-211), Memorandum Opinion and Order*, FCC 98-225 (released September 14, 1998) at ¶40. In fact, competition in the domestic interexchange market has evolved to the point where no carrier is able to exercise market power in the provision of long distances services.[1] In the international market, AT&T -- the largest U.S. carrier -- has been non-dominant in the non-IMTS product market since 1985 and was found to be non-dominant in the IMTS product market since 1996.[2] This is in sharp contrast to the situation that existed in the interexchange market in 1980 when the Commission adopted its no-bundling rules. At that time, AT&T, as part of the Bell System, exercised monopoly control in both the domestic interexchange and U.S. international markets.

The intensity of competition in the CPE, enhanced services and interexchange markets that exists today enables consumers to enjoy a plethora of "options in obtaining equipment and services that best suit their needs." *Further Notice* at ¶2. Continuation of a regulatory scheme designed to control the exploitation of market power by dominant carriers to prevent harm to consumers and emerging competition in the CPE and enhanced services market is, therefore, no

[1]In 1995, the Commission declared AT&T, at the time the only dominant interexchange carrier in the domestic market, to be non-dominant. *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271 (1995).

[2]*International Competitive Carrier Policies*, 102 F.C.C. 2d 812 (1985); *Motion of AT&T Corp. to be Declared Non-Dominant for International Service*, 11 FCC Rcd 17963 (1996).

longer necessary with respect to carriers without market power. As is the case in unregulated, competitive markets, protection against such harm and the concomitant maximization of consumer welfare are achieved by competitors offering customers an array of products and services both in bundles and individually and having such customers "decide individually whether the benefits of packaging exceed the potential benefits of buying the components of the bundle individually." *Second Computer Inquiry*, 77 F.C.C. 2d at 443, n. 52.

Because affording customers the freedom to choose the mix of services and products that best suit their needs is the hallmark of competitive markets, it is not surprising that the Commission's tentative conclusion in the initial *Notice of Proposed Rulemaking* to eliminate the rule preventing non-dominant carriers from offering packages that bundled interexchange services with CPE received overwhelming support from a broad spectrum of interests, including especially customers, state utility commissions and at least one equipment manufacturer. In fact, only CPE manufacturers or their representative associations urged that the Commission retain the rule. They argued that despite the development of highly competitive markets in the provision of CPE and interexchange services, a non-dominant carrier has the ability to force customers into taking unwanted CPE in order to receive transmission services or conversely taking unwanted transmission services in order to obtain certain equipment. See *Further Notice* at ¶13. But such argument is contrary to economic principles. A carrier without market power can no more force a customer into purchasing unwanted products or services than Giant can force customers to shop at its stores rather than at Safeway. The only thing that such carriers can do is present innovative products and services in the marketplace -- either together or on a stand-alone basis -- in an effort to attract as many customers to its offerings as possible and thereby increase market share.

Moreover, carriers without market power have no choice but to offer their products and services at reasonable prices. There is simply no merit to the argument by equipment vendors that if non-dominant carriers are allowed to bundle CPE with their telecommunications services, they will price the CPE component of the package substantially below costs in an effort to induce customers to take the transmission services included in the package. *Further Notice* at ¶13 and n. 36. A non-dominant carrier following such a strategy would simply lose money on each and every package sold since it does not have the market power to price its other services above costs in order to make up for the losses sustained in providing the equipment. Sprint does not doubt that some competitive carriers may act irrationally by pricing their bundles in the manner suggested by the equipment vendors. But, Commission regulation must be based on the economic principle that competitive businesses will act in a rational manner. Regulation that is designed to control the aberrant pricing behavior of a few carriers but that interferes with the workings of a competitive marketplace and the benefits that such competition brings to consumers is not in the public interest. In short, Sprint strongly recommends that the Commission eliminate, at long last, the rules that prevent non-dominant carriers from bundling CPE and enhanced services with their telecommunications services.

II. THE COMMISSION SHOULD RELAX THE NO-BUNDLING RULES FOR THOSE DOMINANT CARRIERS THAT HAVE CERTAIN CHARACTERISTICS AND MEET CERTAIN CONDITIONS.

The *Further Notice* also seeks comments on whether the prohibition on the bundling of CPE and enhanced services with the offerings of dominant carriers, *e.g.*, exchange and exchange access services provided by ILECs, should also be eliminated. *Further Notice* at ¶¶27 and 40. The basis for such request appears to be the argument by SBC Communications (SBC) in its

comments on the initial *Notice* that eliminating the no-bundling rules for non-dominant carriers only would place the ILECs at a competitive disadvantage. *Id.* at ¶27.

SBC's justification here is totally without merit and does not provide a principled basis for the Commission to eliminate the no-bundling rules for dominant carriers. SBC's argument here is simply a variant of its oft-repeated contention that all carriers subject to the Commission's jurisdiction must, under the Constitution and the Act, be treated equally. Thus, or so SBC's argument goes, the Commission cannot subject different carriers to different regulatory constraints even if such carriers differ in terms of their market power.

However, the Commission has long subjected disparate classes of carriers to different regulatory treatment depending their market power. The Commission's practice here is consistent with the fundamental principle that it is irrational to require parity in the regulation applied to dominant and non-dominant carriers when each class of carriers is totally different in their ability to harm competition and thereby retard the over-arching goal of the Act to develop a competitive telecommunications marketplace. And, far from being inconsistent with the Act, this fundamental regulatory principle has been explicitly embedded in the Act especially with respect to the regulatory requirements applicable to the ILECs.[3]

Plainly, SBC's plea for regulatory parity with non-dominant carriers can not be accepted. The logic which compels relieving non-dominant carriers of the no-bundling rules simply does not apply to dominant carriers. Nonetheless, this does not mean that the Commission should continue to subject all dominant carriers to the no-bundling rules indiscriminately. Just as the

[3]For example, Sections 251(a) is applicable to all carriers; Section 251(b) is applicable to all LECs; Section 251(c) is applicable to all ILECs; and Sections 271 and 272 are applicable to only to the RBOCs.

Commission has the authority and the duty to adopt a regulatory structure that subjects different classes of carriers to different regulatory requirements, it has the authority and duty to apply different regulation to different carriers within each class as circumstances warrant.

The Commission's decisions in the *Second Computer Inquiry* and those issued in its wake confirm the Commission's regulatory policies are not based upon a "one size fits all" philosophy. For example, only the Bell System was subjected to the structural separation requirements adopted in the *Second Computer Inquiry*. Other LECs, *e.g.*, GTE, United and Centel (the predecessors to Sprint's local carriers), were not subject to the structural separation requirements adopted in the *Second Computer Inquiry*, in part, because of their inability to engage in anticompetitive activities through there control of local facilities on a broad geographic scale. *See, Second Computer Inquiry*, 77 F.C.C. 2d at 466-468; 84 F.C.C. 2d 50, 72-75 (1980). Moreover, when the Commission relieved the RBOCs of the structural separation requirements for CPE and instead subjected the RBOCS to nonstructural safeguards, the Commission declined to impose similar safeguards on other LECs since such carriers "are sufficiently different from the BOCs with respect to the potential for anticompetitive abuse in their provision of CPE..." *Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and Independent Telephone Companies*, 2 F.C.C. Rcd 143 (¶2) (1987). Such differences included the fact that the service areas of the independent LECs were "widely scattered and relatively small and autonomous" and that, as a result, "it was less likely that such carriers will be able to engage in the anticompetitive conduct affecting the highly competitive CPE market..." *Id.* at 158 (¶106).

For these reasons, Sprint believes that the Commission should eliminate, upon proper justification, the no-bundling rules for dominant ILECs. Such justification should include those

factors that the Commission has traditionally considered in its regulatory approach to different LECs, *e.g.*, size; geographic scope of the LECs operations, etc. Also, in light of the 1996 Act, Sprint believes that an ILEC seeking to be relieved of the no-bundling requirements must demonstrate compliance with all of the requirements of the Act that specifically apply to it, *e.g.*, Section 251(c) in the case of non-RBOC ILECs.

Moreover, an ILEC that is relieved of the no-bundling rules must be comply with any additional conditions that the Commission deems necessary to ensure against the possibility that, notwithstanding their compliance with Section 251(c) and other applicable provisions of the Act, that they not exploit their dominance in the local exchange and exchange access markets to harm competition in competitive markets. Such conditions should include at a minimum: a prohibition on tying competitive services with the provision of exchange or exchange access services; a requirement that the ILEC meet the requirements of Section 254(k); and, a requirement that each of the components in a bundled package be offered separately.

Respectfully submitted,

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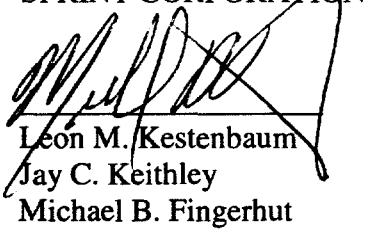

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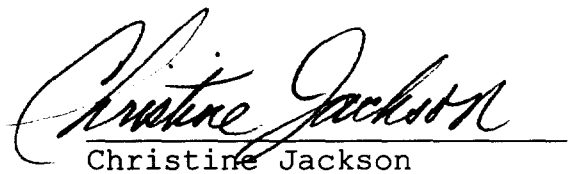
November 23, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Comments of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 23rd day of November, 1998 to the parties on the attached list.



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